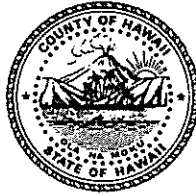


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

January 25, 1999

Mr. Ricardo M. Barbati  
27 Lono Street  
Hilo, Hawaii 96720

Dear Mr. Barbati:

Variance Permit No.983 (VAR 98-75)  
Applicant: YOSHIKO MORI  
Owners: YOSHIKO MORI, ET AL.  
Request: Variance From Chapter 23, Subdivisions,  
to Allow Lots to be Created Without Meeting the  
Minimum Lot Size Requirements of the County's  
Zoning and Subdivisions Codes  
Tax Map Key: 1-1-039:204 and 277

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of a subdivision to allow lots to be created without meeting the minimum lot size requirements of the county's Zoning and Subdivision Codes.

#### FINDINGS AND RECOMMENDATIONS

The Planning Director has concluded that the variance from the county's Zoning and Subdivision Code can be approved based on the following findings.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

Prior to the submission of your variance application, this office requested and received additional information on February 25, 1998, from the State Land Use Commission (SLUC) State of Hawaii Department of Business, Economic Development & Tourism (DBED&T). In addition, other information was received from the applicants to warrant and verify the metes and bounds of the subject property. The following copies of documents are in our files and

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documents received were considered:

1. Copy of a transmittal memo, dated February 23, 1998, to Virginia Goldstein, regarding LUC Docket No. SP(T) 62-13/Crescent Acres, Ltd.
2. Copy of transmittal letter, dated June 12, 1962 and an attached copy of Land Court map dated June 12, 1962, showing a subdivision of Lot 6229 into six (6) lots (Lots 6229-A to 6229-F, Inclusive).
3. Application For Special Permit received by LUC on "JUNE 18, 1962". The description of the request or purpose listed on the special permit application states: "To subdivide Lot 6229 which consists of 2.5 acres into 6 lots. The total roadway frontage of this lot is 740.32 feet. The average lot frontage facing the roadway in the entire subdivision is 100 feet". Furthermore, the description of the property states in part: "Request permit to subdivide into 6 lots as shown on attached map".
3. Copy of a letter dated June 13, 1962, from R. J. Darnell, Executive Director to the Office of the Attorney General (AG) 1962 requesting a ruling regarding the legality of an interim regulation adopted April 4, 1962 by the Commission pursuant to Act 187, SLH 1961 or Part II., Interim Regulations, Sec. 2.1 (b) Agricultural districts, relating to "Minimum lot sizes within this district shall be five acres".
4. Copy of a letter dated June 15, 1962, from E. C. Bryan, Chairman to the AG requesting a response or opinion addressing the issues set forth in LUC letter dated June 13, 1962 be forwarded in a statement prior to a LUC meeting scheduled on June 26, 1962.
5. Copy of Opinion No. 62-33, dated June 25, 1962 which states and purports:  

"In our opinion the Land Use Commission is without power to prescribe the minimum size of lots within an agricultural district. The power instead rests in the counties under section 138-42, Revised Laws of Hawaii 1955, as amended. Accordingly, the requirement of Interim Regulation 2.1(b) that the minimum lot size within an agricultural district shall be five acres is null and void" and "The Land Use Commission in adopting land use regulations must give due consideration to the zoning powers of the counties, and in the instant case, we conclude that the power to prescribe minimum or maximum lot sizes with an

agricultural district rests in the counties".

6. Copy of a letter, dated July 6, 1962, from LUC, citing the ruling by AG, "that the Land Use Commission's regulation requiring a minimum lot size of five acres in the Agricultural district is not in effect, and that the power to determine lot size is specifically reserved to the Counties". The request for a "lot size" variance via the special permit was unnecessary and returned to the applicant.
7. Copy of letter, dated July 19, 1962, from Frederick K. Nunns, Director (University of Hawaii ?), notwithstanding the issue and prohibition of the LUC to specify "minimum lot sizes", citing the LUC's responsibility of prescribing regulations that prohibit urban uses within an agricultural district.
8. Copy of Opinion No. 62-38, dated July 31, 1962, further addresses and clarifies the LUC's "Interim Regulations" and reaffirms the power of the counties to prescribe minimum lot sizes for lands which happen to be situated in an agricultural district.
9. No objections to the variance application were received from the surrounding property owners.

In view of the above, it appears the action taken by the Planning and Traffic Commission (P&TC) in 1962 to require a "special permit" to further consider the original subdivision application was not necessary. Therefore, the letter "to rescind its action taken in July" stated in a letter dated October 31, 1962 was not warranted. Furthermore, it appears the P&TC was not aware of the LUC reply by R. J. Darnell's to Mr. Kamau's special permit letter application, whereby, the LUC in their letter dated July 6, 1962 found that the request for a special permit to subdivide the subject TMK property to be subdivided into six (6) lots was not required. Furthermore, the issues cited and requirements to seek a "special permit" cited in the County's October 15, 1962 letter and the substantive facts of an AG ruling cited in the October 31, 1962, letters are confusing since it appears, by the LUC letter dated July 6, 1962, that the LUC remanded the "power" to review and approve subdivisions within the proposed agricultural districts. However, it appears that copies of the applicant's letter and application to the LUC and subsequent AG opinions and other correspondence were never clearly communicated to the County for the record, or, if they were, were never placed into the subdivision files for understanding and future reference. The copies of the AG opinions do not include any "rulings" or substantive language to cause the Planning Commission to rescind the original tentative subdivision approval to allow the proposed six (6) lot subdivision to proceed subject to the conditions dated July 24, 1962. Subsequent to ruling by the LUC in July 1962,

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it appears an application and map to subdivide the original property into six (6) lots was submitted and approved by the Land Court in 1963.

(Refer to a chronology and information contained in a letter dated April 19, 1988, from GEORGE S. YUDA, ESQ. in the department's file. Pursuant to Mr. Yuda's letter one of the "subdivided" parcels shown on the Land Court Map (Lot 6229-A, which was issued tax map key number-TMK:(3)1-1-039:277) was sold in 1964 and it appears the other remaining five (5) lots became part of the Kamau Investment Trust. It appears that the trust sold the remain 5-lots in 1984 to Mrs. Mori on October 24, 1984.)

Furthermore, three (3) years elapsed before the status of the pending 6-lot subdivision (Refer to the Planning and Traffic Commission's letter dated October 15, 1962, in the original subdivision file) was reconsidered by the Planning Commission in 1965. Pursuant to letter dated November 12, 1965, the Planning Commission withdrew the subdivision, citing "our files indicated that you have not processed your application with the Land Use Commission".

Therefore, in view of the above and new information received from the applicant, SLUC/DBED&T, and the confusion surrounding the jurisdiction of the county to prescribe minimum lot size in 1962, there are special and unusual circumstances to warrant the granting of the subject variance.

In view of the above, the variance requested by the applicant and required by Planning Director is approved subject to the following conditions:


1. The applicants/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners shall cause and submit a subdivision application showing the approved lots on a subdivision map to the Planning Director for review and subdivision approval and comply with all state statutes pertaining to subdivisions and recordation.
3. Future building improvements and permitted uses on the approved lots shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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Thank you very much for your understanding and your patience.

Any questions may be directed to William Yamanoha of this office at 961-8288.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

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cc: Kenneth K. Takenaka, Esq.  
Mr. and Mrs. Paul S. Conol